

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, LODGE 7,	:	
	:	
Charging Party,	:	<u>U.L.P. No. 01-12-333</u>
	:	
v.	:	
	:	
UNIVERSITY OF DELAWARE,	:	
	:	
Respondent.	:	

Probable Cause Determination

The University of Delaware (“University”) is a public employer within the meaning of §1602(l) of the Police Officers’ and Firefighters’ Employment Relations Act (“POFERA”), 19 Del.C. Chapter 16 (1986). ¹

The Charging Party, Fraternal Order of Police Lodge No. 7 (“FOP”) is an employee organization within the meaning of 19 Del.C. §1602(g). ² The FOP is the exclusive bargaining representative of the bargaining unit of all persons employed as Police Officer, Master Police Officer, Corporal, and Sergeant by the University. 19 Del.C. §1602(h). ³

¹ “Public employer” or “employer” means the State or political subdivisions of the State or any agency thereof, any county, or any agency thereof, or any municipal corporation or municipality, city or town located within the State or any agency thereof, which (1) upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title, (2) hereafter elects to come within this chapter, or (3) employs 25 or more full-time employees. For the purposes of paragraph (3) of this subsection, “employees” shall include each and every person employed by the public employer except: (A) any person elected by popular vote; and (B) any person appointed to serve on a board or commission. 19 Del.C. §1602(l).

² “Employee organization” means any organization which admits to membership police officers or firefighters employed by a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization. 19 Del.C. §1602(g).

³ “Exclusive bargaining representative” or “exclusive representative” means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit. 19 Del.C. §1602 (h).

On December 26, 2001, the FOP filed this unfair labor practice charge alleging the University violated §1607, Unfair Labor Practices subsection (a)(1), (a)(3), and (a)(5) of the POFERA, which provides:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
 - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure, or other terms and conditions of employment.
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

On January 7, 2002, the University filed its Answer to the Charge, which included a request that the petition be dismissed because it lacks merit.

DISCUSSION

FOP Lodge 7 was certified as the exclusive bargaining representative of University of Delaware police officers on May 4, 2001. Between that date and the date this charge was filed, the FOP and the University have engaged in informal discussions concerning the initiation of collective bargaining, but have not yet met formally to negotiate.

It is not disputed that, under University Policy #4-55, the University conducts yearly performance appraisals for merit increases of its professional and salaried staff who are not represented by a collective bargaining representative. Merit increases are normally implemented on or about July 1, annually. On or about July 1, 2001, the University implemented a merit increase, averaging 3.75% of salary, for unrepresented professional and salaried employees.

It is also undisputed that the University did not award merit increases to bargaining unit members and that the University rejected the FOP's attempt to grieve this matter through the employee grievance procedure. By these actions, the FOP concludes the University violated its duty to bargain in good faith and violated 19 Del.C. §§1607(a)(2), (a)(3), and (a)(5).

The University argues the bargaining unit is no longer unrepresented, and consequently, the University has an obligation to negotiate wages and other terms and conditions of employment with FOP Lodge 7. Further, the grievance filed by the FOP could not be grieved as wages for the bargaining unit were now subject to collective bargaining.

DECISION

Because this is a matter of first impression before this Board and because the pleadings raise a question as to status quo which must be maintained during the period after certification and prior to negotiation of a first collective bargaining agreement, the pleadings provide a basis to find probable cause to believe that the University may have violated its duty to bargain in good faith.

WHEREFORE, a hearing will be convened to receive evidence and argument concerning the allegations set forth in this unfair labor practice charge.

IT IS SO ORDERED.

/s/Charles D. Long, Jr.
CHARLES D. LONG, JR., Executive Director
Del. Public Employment Relations Bd.

DATED: 24 January 2002